

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF SCOTT

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SCOTT COUNTY COURTS

FIRST JUDICIAL DISTRICT
Case Type: Mechanic's Lien Foreclosure

In re M.W. Johnson Construction, Inc.
Mechanic's Lien Foreclosure Litigation

Consolidated Master Court File: 70-CV-09-7343

Judge: Jerome B. Abrams

Stewart Plumbing, Inc.,

Scott County Court File: 70-CV-09-7935

Plaintiff,

Dakota County Court File: 19HA-CV-08-1880

vs.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, ORDER FOR SUMMARY
JUDGMENT AND JUDGMENT**

John S. Dwyer and Elizabeth A.
Dwyer, M.W. Johnson Construction,
Inc., American Residential Mortgage
LLP, Cemstone Products, John Doe,
Mary Roe, XYZ Corporation, and ABC
Partnership,

Defendants.

The above-captioned matter came on for hearing before the undersigned Judge of District Court on August 5, 2009, pursuant to Plaintiff Stewart Plumbing, Inc.'s ("Stewart") Motion for Summary Judgment. Susanne M. Glasser, Esq. appeared on behalf of Stewart. Steven R. Little, Esq. appeared on behalf of Defendants John S. Dwyer and Elizabeth A. Dwyer¹ (the "Dwyers") and American Residential Mortgage, LLP ("American"). The Court, having been fully advised in the premises, together with all of the files and proceedings herein, makes the following:

¹ The correct spelling of Ms. Dwyer's first name is "Elisabeth".

FINDINGS OF FACT

1. This mechanic's lien foreclosure action involves certain real property located in Dakota County, Minnesota, legally described as follows:

Lot 8, Block 2, Spyglass Third Addition

(the "Property").

2. Stewart entered into a contract or series of contracts with M.W. Johnson Construction, Inc. under which Stewart provided certain plumbing materials and labor for the improvement of the Property.

3. M.W. Johnson sold the Property to the Dwyers by way of a warranty deed dated June 29, 2007, which was recorded with the Office of the Dakota County Recorder on August 30, 2007, as Document No. 2541127.

4. Mortgage Electronic Registration Systems, Inc., as nominee for American Residential Mortgage, LP ("MERS") is the holder of a mortgage secured by the Property, given by the Dwyers, as mortgagors, in favor of MERS, as mortgagee, which was recorded with the Office of the Dakota County Recorder on August 30, 2007, as Document No. 2541127 (the "MERS Mortgage").

5. Stewart recorded a mechanic's lien statement against the Property in the original principal amount of \$11,800.00 with the Office of the Dakota County Recorder on October 1, 2007, as Document No. 2551205 ("Stewart's Mechanic's Lien Statement").

6. Stewart's last item of improvement to the Property was August 1, 2007.

7. Stewart commenced this action on June 10, 2008, within one year of its last item of improvement to the Property.

8. Stewart's Mechanic's Lien is valid in the original principal amount of \$11,800.00 and is prior and superior to the rights, title and interests of the Johnsons, Fairfield and Bell in the Property.

9. Defendant Cemstone Products Co. ("Cemstone") recorded a mechanic's lien against the Property with the Office of the Dakota County Recorder on June 28, 2007, as Document No. 2527151 ("Cemstone Mechanic's Lien Statement").

10. Despite being properly served, Cemstone failed to answer Stewart's Complaint or otherwise appear in this action and has not commenced a separate action to foreclose its Mechanic's Lien or Amended Mechanic's Lien.

11. More than one year has passed since the last item of improvement of February 28, 2007, that Cemstone claimed it provided to the Property as set forth in its Mechanic's Lien Statement.

CONCLUSIONS OF LAW

1. Stewart is entitled to summary judgment.

2. Stewart's Mechanic's Lien against the Property is valid and enforceable in the amount of \$11,800.00 in principal, together with pre-judgment interest pursuant to Minn. Stat. § 514.135 in the amount of \$ 1,105.36 through Oct. 22, 2009, which continues to accrue at the rate of \$ 1.29 per diem until entry of Judgment, together with attorneys' fees in the amount of \$ 2,523.40 and costs and disbursements in the amount of \$ 890.30 for a total judgment of \$ 16,342.28.

3. Stewart's Mechanic's Lien is prior and superior in all respects to the Dwyers' and MERS's interests in the Property.

4. Cemstone's Mechanic's Lien, as described herein, has expired and is void and of no affect against the Property pursuant to Minn. Stat. § 514.012, subd. 3.

5. Stewart's Mechanic's Lien shall be foreclosed and the Property sold by the Sheriff of Dakota County, Minnesota at a public auction in the manner provided by Minnesota Stat. § 514.15.

6. The proceeds of said sale shall be applied first to the payment of costs and expenses of the sale and then to payment of the amounts adjudged to be due and owing to Stewart with interest at the judgment rate provided herein from the date this judgment is entered to the date of said sale.

7. The sale shall be reported to and made subject to the approval of this Court. At that time, Stewart may make application to the Court for an additional award of attorneys' fees and costs incurred in connection with the sale.

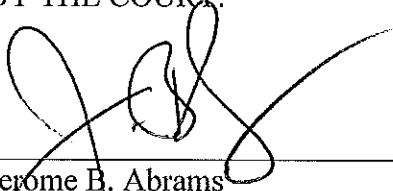
8. All the parties herein, and all persons claiming under them or any of them, shall be forever barred and foreclosed from any equity of redemption and all right, title and interest, lien or claim in the Property, except that the Dwyers and their legal representatives, successors, and assigns shall have the right to redeem the Property from said sale in accordance with Minn. Stat. § 514.15 within six (6) months from the date of the order confirming said sale and persons having junior liens, specifically the holder of the MERS Mortgage, shall therefore have such redemption rights as provided by statute for junior lienholders.

ORDER FOR JUDGMENT

1. Stewart's Motion for Summary Judgment is hereby GRANTED.
2. There is no just reason for delay of entry of final judgment as provided herein, and the District Court Administrator is directed to immediately enter final judgment in accordance with these Findings of Fact and Conclusions of Law.
3. The Dakota County Recorder shall accept a certified copy of these Findings of Fact, Conclusions of Law and Order for Judgment for recording against the Property legally described in Paragraph 1 of these Findings

BY THE COURT:

Dated: 11-5, 2009



Jerome B. Abrams
Judge of District Court
Court File Nos. 70-CV-09-7343
and 70-CV-09-7935

JUDGMENT

I DO HEREBY CERTIFY THAT THE FOREGOING ORDER
CONSTITUTES THE JUDGMENT OF THIS COURT.

DATE 11-9-09
GREGORY M. ESS
COURT ADMINISTRATOR, SCOTT COUNTY, MINN.

DEPUTY
